

Introduced by Senator Pavley

February 7, 2011

An act to amend Section 3000 of the Penal Code, and to amend Section 6601 of the Welfare and Institutions Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 179, as amended, Pavley. Sex offenders: parole.

Under existing law, as amended by Proposition 83 of the November 7, 2006, statewide general election, the parole period of any person found to be a sexually violent predator is tolled until that person is found to no longer be a sexually violent predator, as specified.

This bill instead would provide that for any person subject to a sexually violent predator proceeding, as specified, an order issued by a judge pursuant to specified provisions, finding that the petition supports a finding of probable cause to believe that the person is likely to engage in sexually violent criminal behavior upon his or her release, shall toll the period of parole of that person, *if the person is committed to the State Department of Mental Health as a sexually violent predator*, from the date that person is released until a specified court order is entered. *The bill would provide that if the person is not committed to the State Department of Mental Health as a sexually violent predator, the parole period shall not be tolled.*

The bill would incorporate changes made by AB 117 of the 2011–12 Regular Session, which has been chaptered but is not yet operative, to become operative if both the bill and AB 117 become operative.

Proposition 83 permits the Legislature, by a vote of $\frac{2}{3}$ of the membership of each house and in accordance with specified procedures, to amend the provisions of the act.

This bill would therefore require a $\frac{2}{3}$ vote.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3000 of the Penal Code is amended to
2 read:

3 3000. (a) (1) The Legislature finds and declares that the period
4 immediately following incarceration is critical to successful
5 reintegration of the offender into society and to positive citizenship.
6 It is in the interest of public safety for the state to provide for the
7 effective supervision of and surveillance of parolees, including
8 the judicious use of revocation actions, and to provide educational,
9 vocational, family and personal counseling necessary to assist
10 parolees in the transition between imprisonment and discharge. A
11 sentence pursuant to Section 1168 or 1170 shall include a period
12 of parole, unless waived, or as otherwise provided in this article.

13 (2) The Legislature finds and declares that it is not the intent of
14 this section to diminish resources allocated to the Department of
15 Corrections and Rehabilitation for parole functions for which the
16 department is responsible. It is also not the intent of this section
17 to diminish the resources allocated to the Board of Parole Hearings
18 to execute its duties with respect to parole functions for which the
19 board is responsible.

20 (3) The Legislature finds and declares that diligent effort must
21 be made to ensure that parolees are held accountable for their
22 criminal behavior, including, but not limited to, the satisfaction of
23 restitution fines and orders.

24 (4) For any person subject to a sexually violent predator
25 proceeding pursuant to Article 4 (commencing with Section 6600)
26 of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions
27 Code, an order issued by a judge pursuant to Section 6601.5 of the
28 Welfare and Institutions Code, finding that the petition, on its face,
29 supports a finding of probable cause to believe that the individual
30 named in the petition is likely to engage in sexually violent
31 predatory criminal behavior upon his or her release, shall toll the

1 period of parole of that person, from the date that person is released
2 by the Department of Corrections and Rehabilitation until a date
3 determined as follows:

4 ~~(A) If the judge, following a probable cause hearing, dismisses~~
5 ~~the petition under Section 6602 of the Welfare and Institutions~~
6 ~~Code, the date the judge enters the order of dismissal.~~

7 ~~(B) If the judge or jury is not satisfied beyond a reasonable~~
8 ~~doubt that the person is a sexually violent predator under Section~~
9 ~~6604 of the Welfare and Institutions Code, the date the judge enters~~
10 ~~the order.~~

11 ~~(C)~~

12 (A) If the person is committed to the State Department of Mental
13 Health as a sexually violent predator and subsequently a court
14 orders that the person be unconditionally discharged pursuant to
15 Section 6605 or 6608 of the Welfare and Institutions Code, the
16 date the judge enters the order.

17 *(B) If the person is not committed to the State Department of*
18 *Mental Health as a sexually violent predator, the parole period*
19 *shall not be tolled.*

20 (b) Notwithstanding any provision to the contrary in Article 3
21 (commencing with Section 3040) of this chapter, the following
22 shall apply:

23 (1) In the case of any inmate sentenced under Section 1168, the
24 period of parole shall not exceed five years in the case of an inmate
25 imprisoned for any offense other than first or second degree murder
26 for which the inmate has received a life sentence, and shall not
27 exceed three years in the case of any other inmate, unless in either
28 case the parole authority for good cause waives parole and
29 discharges the inmate from custody of the department. This
30 subdivision shall also be applicable to inmates who committed
31 crimes prior to July 1, 1977, to the extent specified in Section
32 1170.2.

33 (2) At the expiration of a term of imprisonment of one year and
34 one day, or a term of imprisonment imposed pursuant to Section
35 1170 or at the expiration of a term reduced pursuant to Section
36 2931 or 2933, if applicable, the inmate shall be released on parole
37 for a period not exceeding three years, except that any inmate
38 sentenced for an offense specified in paragraph (3), (4), (5), (6),
39 (11), or (18) of subdivision (c) of Section 667.5 shall be released

1 on parole for a period not exceeding 10 years, unless a longer
2 period of parole is specified in Section 3000.1.

3 (3) Notwithstanding paragraphs (1) and (2), in the case of any
4 offense for which the inmate has received a life sentence pursuant
5 to subdivision (b) of Section 209, with the intent to commit a
6 specified sex offense, or Section 667.51, 667.61, or 667.71, the
7 period of parole shall be 10 years, unless a longer period of parole
8 is specified in Section 3000.1.

9 (4) (A) Notwithstanding paragraphs (1) to (3), inclusive, in the
10 case of a person convicted of and required to register as a sex
11 offender for the commission of an offense specified in Section
12 261, 262, 264.1, 286, 288a, paragraph (1) of subdivision (b) of
13 Section 288, Section 288.5, or 289, in which one or more of the
14 victims of the offense was a child under 14 years of age, the period
15 of parole shall be 20 years unless the board, for good cause,
16 determines that the person will be retained on parole. The board
17 shall make a written record of this determination and transmit a
18 copy of it to the parolee.

19 (B) In the event of a retention on parole, the parolee shall be
20 entitled to a review by the board each year thereafter.

21 (C) There shall be a hearing as provided in Sections 3041.5 and
22 3041.7 within 12 months of the date of any revocation of parole
23 to consider the release of the inmate on parole, and notwithstanding
24 the provisions of paragraph (2) of subdivision (b) of Section
25 3041.5, there shall be annual parole consideration hearings
26 thereafter, unless the person is released or otherwise ineligible for
27 parole release. The panel or board shall release the person within
28 one year of the date of the revocation unless it determines that the
29 circumstances and gravity of the parole violation are such that
30 consideration of the public safety requires a more lengthy period
31 of incarceration or unless there is a new prison commitment
32 following a conviction.

33 (D) The provisions of Section 3042 shall not apply to any
34 hearing held pursuant to this subdivision.

35 (5) The parole authority shall consider the request of any inmate
36 regarding the length of his or her parole and the conditions thereof.

37 (6) Upon successful completion of parole, or at the end of the
38 maximum statutory period of parole specified for the inmate under
39 paragraph (1), (2), (3), or (4), as the case may be, whichever is
40 earlier, the inmate shall be discharged from custody. The date of

1 the maximum statutory period of parole under this subdivision and
2 paragraphs (1), (2), (3), and (4) shall be computed from the date
3 of initial parole and shall be a period chronologically determined.
4 Time during which parole is suspended because the prisoner has
5 absconded or has been returned to custody as a parole violator
6 shall not be credited toward any period of parole unless the prisoner
7 is found not guilty of the parole violation. However, the period of
8 parole is subject to the following:

9 (A) Except as provided in Section 3064, in no case may a
10 prisoner subject to three years on parole be retained under parole
11 supervision or in custody for a period longer than four years from
12 the date of his or her initial parole.

13 (B) Except as provided in Section 3064, in no case may a
14 prisoner subject to five years on parole be retained under parole
15 supervision or in custody for a period longer than seven years from
16 the date of his or her initial parole.

17 (C) Except as provided in Section 3064, in no case may a
18 prisoner subject to 10 years on parole be retained under parole
19 supervision or in custody for a period longer than 15 years from
20 the date of his or her initial parole.

21 (7) The Department of Corrections and Rehabilitation shall meet
22 with each inmate at least 30 days prior to his or her good time
23 release date and shall provide, under guidelines specified by the
24 parole authority, the conditions of parole and the length of parole
25 up to the maximum period of time provided by law. The inmate
26 has the right to reconsideration of the length of parole and
27 conditions thereof by the parole authority. The Department of
28 Corrections and Rehabilitation or the Board of Parole Hearings
29 may impose as a condition of parole that a prisoner make payments
30 on the prisoner's outstanding restitution fines or orders imposed
31 pursuant to subdivision (a) or (c) of Section 13967 of the
32 Government Code, as operative prior to September 28, 1994, or
33 subdivision (b) or (f) of Section 1202.4.

34 (8) For purposes of this chapter, the Board of Parole Hearings
35 shall be considered the parole authority.

36 (9) The sole authority to issue warrants for the return to actual
37 custody of any state prisoner released on parole rests with the
38 Board of Parole Hearings, except for any escaped state prisoner
39 or any state prisoner released prior to his or her scheduled release

1 date who should be returned to custody, and Section 3060 shall
2 apply.

3 (10) It is the intent of the Legislature that efforts be made with
4 respect to persons who are subject to Section 290.011 who are on
5 parole to engage them in treatment.

6 *SEC. 1.5. Section 3000 of the Penal Code, as amended by*
7 *Section 36 of Chapter 39 of the Statutes of 2011, is amended to*
8 *read:*

9 3000. (a) (1) The Legislature finds and declares that the period
10 immediately following incarceration is critical to successful
11 reintegration of the offender into society and to positive citizenship.
12 It is in the interest of public safety for the state to provide for the
13 effective supervision of and surveillance of parolees, including
14 the judicious use of revocation actions, and to provide educational,
15 vocational, family and personal counseling necessary to assist
16 parolees in the transition between imprisonment and discharge. A
17 sentence resulting in imprisonment in the state prison pursuant to
18 Section 1168 or 1170 shall include a period of parole supervision
19 or postrelease community supervision, unless waived, or as
20 otherwise provided in this article.

21 (2) The Legislature finds and declares that it is not the intent of
22 this section to diminish resources allocated to the Department of
23 Corrections and Rehabilitation for parole functions for which the
24 department is responsible. It is also not the intent of this section
25 to diminish the resources allocated to the Board of Parole Hearings
26 to execute its duties with respect to parole functions for which the
27 board is responsible.

28 (3) The Legislature finds and declares that diligent effort must
29 be made to ensure that parolees are held accountable for their
30 criminal behavior, including, but not limited to, the satisfaction of
31 restitution fines and orders.

32 ~~(4) The parole period of any person found to be a sexually~~
33 ~~violent predator shall be tolled until that person is found to no~~
34 ~~longer be a sexually violent predator, at which time the period of~~
35 ~~parole, or any remaining portion thereof, shall begin to run.~~

36 (4) *For any person subject to a sexually violent predator*
37 *proceeding pursuant to Article 4 (commencing with Section 6600)*
38 *of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions*
39 *Code, an order issued by a judge pursuant to Section 6601.5 of*
40 *the Welfare and Institutions Code, finding that the petition, on its*

1 *face, supports a finding of probable cause to believe that the*
2 *individual named in the petition is likely to engage in sexually*
3 *violent predatory criminal behavior upon his or her release, shall*
4 *toll the period of parole of that person, from the date that person*
5 *is released by the Department of Corrections and Rehabilitation*
6 *until a date determined as follows:*

7 *(A) If the person is committed to the State Department of Mental*
8 *Health as a sexually violent predator and subsequently a court*
9 *orders that the person be unconditionally discharged pursuant to*
10 *Section 6605 or 6608 of the Welfare and Institutions Code, the*
11 *date the judge enters the order.*

12 *(B) If the person is not committed to the State Department of*
13 *Mental Health as a sexually violent predator, the parole period*
14 *shall not be tolled.*

15 (b) Notwithstanding any provision to the contrary in Article 3
16 (commencing with Section 3040) of this chapter, the following
17 shall apply to any inmate subject to Section 3000.08:

18 (1) In the case of any inmate sentenced under Section 1168, the
19 period of parole shall not exceed five years in the case of an inmate
20 imprisoned for any offense other than first or second degree murder
21 for which the inmate has received a life sentence, and shall not
22 exceed three years in the case of any other inmate, unless in either
23 case the parole authority for good cause waives parole and
24 discharges the inmate from custody of the department. This
25 subdivision shall also be applicable to inmates who committed
26 crimes prior to July 1, 1977, to the extent specified in Section
27 1170.2.

28 (2) At the expiration of a term of imprisonment of one year and
29 one day, or a term of imprisonment imposed pursuant to Section
30 1170 or at the expiration of a term reduced pursuant to Section
31 2931 or 2933, if applicable, the inmate shall be released on parole
32 for a period not exceeding three years, except that any inmate
33 sentenced for an offense specified in paragraph (3), (4), (5), (6),
34 (11), or (18) of subdivision (c) of Section 667.5 shall be released
35 on parole for a period not exceeding 10 years, unless a longer
36 period of parole is specified in Section 3000.1.

37 (3) Notwithstanding paragraphs (1) and (2), in the case of any
38 offense for which the inmate has received a life sentence pursuant
39 to subdivision (b) of Section 209, with the intent to commit a
40 specified sex offense, or Section 667.51, 667.61, or 667.71, the

1 period of parole shall be 10 years, unless a longer period of parole
2 is specified in Section 3000.1.

3 (4) (A) Notwithstanding paragraphs (1) to (3), inclusive, in the
4 case of a person convicted of and required to register as a sex
5 offender for the commission of an offense specified in Section
6 261, 262, 264.1, 286, 288a, paragraph (1) of subdivision (b) of
7 Section 288, Section 288.5, or 289, in which one or more of the
8 victims of the offense was a child under 14 years of age, the period
9 of parole shall be 20 years and six months unless the board, for
10 good cause, determines that the person will be retained on parole.
11 The board shall make a written record of this determination and
12 transmit a copy of it to the parolee.

13 (B) In the event of a retention on parole, the parolee shall be
14 entitled to a review by the board each year thereafter.

15 (C) There shall be a board hearing consistent with the procedures
16 set forth in Sections 3041.5 and 3041.7 within 12 months of the
17 date of any order returning the parolee to custody to consider the
18 release of the inmate on parole, and notwithstanding the provisions
19 of paragraph (2) of subdivision (b) of Section 3041.5, there shall
20 be annual parole consideration hearings thereafter, unless the
21 person is released or otherwise ineligible for parole release. The
22 panel or board shall release the person within one year of the date
23 of the revocation unless it determines that the circumstances and
24 gravity of the parole violation are such that consideration of the
25 public safety requires a more lengthy period of incarceration or
26 unless there is a new prison commitment following a conviction.

27 (D) The provisions of Section 3042 shall not apply to any
28 hearing held pursuant to this subdivision.

29 (5) The parole authority shall consider the request of any inmate
30 regarding the length of his or her parole and the conditions thereof.

31 (6) Upon successful completion of parole, or at the end of the
32 maximum statutory period of parole specified for the inmate under
33 paragraph (1), (2), (3), or (4), as the case may be, whichever is
34 earlier, the inmate shall be discharged from custody. The date of
35 the maximum statutory period of parole under this subdivision and
36 paragraphs (1), (2), (3), and (4) shall be computed from the date
37 of initial parole and shall be a period chronologically determined.
38 Time during which parole is suspended because the prisoner has
39 absconded or has been returned to custody as a parole violator
40 shall not be credited toward any period of parole unless the prisoner

1 is found not guilty of the parole violation. However, the period of
2 parole is subject to the following:

3 (A) Except as provided in Section 3064, in no case may a
4 prisoner subject to three years on parole be retained under parole
5 supervision or in custody for a period longer than four years from
6 the date of his or her initial parole.

7 (B) Except as provided in Section 3064, in no case may a
8 prisoner subject to five years on parole be retained under parole
9 supervision or in custody for a period longer than seven years from
10 the date of his or her initial parole.

11 (C) Except as provided in Section 3064, in no case may a
12 prisoner subject to 10 years on parole be retained under parole
13 supervision or in custody for a period longer than 15 years from
14 the date of his or her initial parole.

15 (7) The Department of Corrections and Rehabilitation shall meet
16 with each inmate at least 30 days prior to his or her good time
17 release date and shall provide, under guidelines specified by the
18 parole authority or the department, whichever is applicable, the
19 conditions of parole and the length of parole up to the maximum
20 period of time provided by law. The inmate has the right to
21 reconsideration of the length of parole and conditions thereof by
22 the department or the parole authority, whichever is applicable.
23 The Department of Corrections and Rehabilitation or the board
24 may impose as a condition of parole that a prisoner make payments
25 on the prisoner's outstanding restitution fines or orders imposed
26 pursuant to subdivision (a) or (c) of Section 13967 of the
27 Government Code, as operative prior to September 28, 1994, or
28 subdivision (b) or (f) of Section 1202.4.

29 (8) For purposes of this chapter, the board shall be considered
30 the parole authority.

31 (9) The sole authority to issue warrants for the return to actual
32 custody of any state prisoner released on parole rests with the
33 board, except for any escaped state prisoner or any state prisoner
34 released prior to his or her scheduled release date who should be
35 returned to custody, and Section 3060 shall apply.

36 (10) It is the intent of the Legislature that efforts be made with
37 respect to persons who are subject to Section 290.011 who are on
38 parole to engage them in treatment.

1 SEC. 2. Section 6601 of the Welfare and Institutions Code, as
2 amended by Section 3 of Chapter 710 of the Statutes of 2010, is
3 amended to read:

4 6601. (a) (1) Whenever the Secretary of the Department of
5 Corrections and Rehabilitation determines that an individual who
6 is in custody under the jurisdiction of the Department of
7 Corrections and Rehabilitation, and who is either serving a
8 determinate prison sentence or whose parole has been revoked,
9 may be a sexually violent predator, the secretary shall, at least six
10 months prior to that individual's scheduled date for release from
11 prison, refer the person for evaluation in accordance with this
12 section. However, if the inmate was received by the department
13 with less than nine months of his or her sentence to serve, or if the
14 inmate's release date is modified by judicial or administrative
15 action, the secretary may refer the person for evaluation in
16 accordance with this section at a date that is less than six months
17 prior to the inmate's scheduled release date.

18 (2) A petition may be filed under this section if the individual
19 was in custody pursuant to his or her determinate prison term,
20 parole revocation term, or a hold placed pursuant to Section 6601.3,
21 at the time the petition is filed. A petition shall not be dismissed
22 on the basis of a later judicial or administrative determination that
23 the individual's custody was unlawful, if the unlawful custody was
24 the result of a good faith mistake of fact or law. This paragraph
25 shall apply to any petition filed on or after January 1, 1996.

26 (b) The person shall be screened by the Department of
27 Corrections and Rehabilitation and the Board of Parole Hearings
28 based on whether the person has committed a sexually violent
29 predatory offense and on a review of the person's social, criminal,
30 and institutional history. This screening shall be conducted in
31 accordance with a structured screening instrument developed and
32 updated by the State Department of Mental Health in consultation
33 with the Department of Corrections and Rehabilitation. If as a
34 result of this screening it is determined that the person is likely to
35 be a sexually violent predator, the Department of Corrections and
36 Rehabilitation shall refer the person to the State Department of
37 Mental Health for a full evaluation of whether the person meets
38 the criteria in Section 6600.

39 (c) The State Department of Mental Health shall evaluate the
40 person in accordance with a standardized assessment protocol,

1 developed and updated by the State Department of Mental Health,
2 to determine whether the person is a sexually violent predator as
3 defined in this article. The standardized assessment protocol shall
4 require assessment of diagnosable mental disorders, as well as
5 various factors known to be associated with the risk of reoffense
6 among sex offenders. Risk factors to be considered shall include
7 criminal and psychosexual history, type, degree, and duration of
8 sexual deviance, and severity of mental disorder.

9 (d) Pursuant to subdivision (c), the person shall be evaluated
10 by two practicing psychiatrists or psychologists, or one practicing
11 psychiatrist and one practicing psychologist, designated by the
12 Director of Mental Health, one or both of whom may be
13 independent professionals as defined in subdivision (g). If both
14 evaluators concur that the person has a diagnosed mental disorder
15 so that he or she is likely to engage in acts of sexual violence
16 without appropriate treatment and custody, the Director of Mental
17 Health shall forward a request for a petition for commitment under
18 Section 6602 to the county designated in subdivision (i). Copies
19 of the evaluation reports and any other supporting documents shall
20 be made available to the attorney designated by the county pursuant
21 to subdivision (i) who may file a petition for commitment.

22 (e) If one of the professionals performing the evaluation pursuant
23 to subdivision (d) does not concur that the person meets the criteria
24 specified in subdivision (d), but the other professional concludes
25 that the person meets those criteria, the Director of Mental Health
26 shall arrange for further examination of the person by two
27 independent professionals selected in accordance with subdivision
28 (g).

29 (f) If an examination by independent professionals pursuant to
30 subdivision (e) is conducted, a petition to request commitment
31 under this article shall only be filed if both independent
32 professionals who evaluate the person pursuant to subdivision (e)
33 concur that the person meets the criteria for commitment specified
34 in subdivision (d). The professionals selected to evaluate the person
35 pursuant to subdivision (g) shall inform the person that the purpose
36 of their examination is not treatment but to determine if the person
37 meets certain criteria to be involuntarily committed pursuant to
38 this article. It is not required that the person appreciate or
39 understand that information.

(g) Any independent professional who is designated by the Secretary of the Department of Corrections and Rehabilitation or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections and Rehabilitation. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) An order issued by a judge pursuant to Section 6601.5, finding that the petition, on its face, supports a finding of probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release, shall toll that person's parole pursuant to paragraph (4) of subdivision (a) of Section 3000 of the Penal Code, *if that individual is determined to be a sexually violent predator*.

(l) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department

1 of Mental Health of its decision regarding the filing of a petition
2 for commitment within 15 days of making that decision.

3 (m) (1) The department shall provide the fiscal and policy
4 committees of the Legislature, including the Chairperson of the
5 Joint Legislative Budget Committee, and the Department of
6 Finance, with a semiannual update on the progress made to hire
7 qualified state employees to conduct the evaluation required
8 pursuant to subdivision (d). The first update shall be provided no
9 later than July 10, 2009.

10 (2) On or before January 2, 2010, the department shall report
11 to the Legislature on all of the following:

12 (A) The costs to the department for the sexual offender
13 commitment program attributable to the provisions in Proposition
14 83 of the November 2006 general election, otherwise known as
15 Jessica's Law.

16 (B) The number and proportion of inmates evaluated by the
17 department for commitment to the program as a result of the
18 expanded evaluation and commitment criteria in Jessica's Law.

19 (C) The number and proportion of those inmates who have
20 actually been committed for treatment in the program.

21 (3) This section shall remain in effect and be repealed on the
22 date that the director executes a declaration, which shall be
23 provided to the fiscal and policy committees of the Legislature,
24 including the Chairperson of the Joint Legislative Budget
25 Committee, and the Department of Finance, specifying that
26 sufficient qualified state employees have been hired to conduct
27 the evaluations required pursuant to subdivision (d), or January 1,
28 2012, 2013, whichever occurs first.

29 SEC. 3. Section 6601 of the Welfare and Institutions Code, as
30 amended by Section 4 of Chapter 710 of the Statutes of 2010, is
31 amended to read:

32 6601. (a) (1) Whenever the Secretary of the Department of
33 Corrections and Rehabilitation determines that an individual who
34 is in custody under the jurisdiction of the Department of
35 Corrections and Rehabilitation, and who is either serving a
36 determinate prison sentence or whose parole has been revoked,
37 may be a sexually violent predator, the secretary shall, at least six
38 months prior to that individual's scheduled date for release from
39 prison, refer the person for evaluation in accordance with this
40 section. However, if the inmate was received by the department

1 with less than nine months of his or her sentence to serve, or if the
2 inmate's release date is modified by judicial or administrative
3 action, the secretary may refer the person for evaluation in
4 accordance with this section at a date that is less than six months
5 prior to the inmate's scheduled release date.

6 (2) A petition may be filed under this section if the individual
7 was in custody pursuant to his or her determinate prison term,
8 parole revocation term, or a hold placed pursuant to Section 6601.3,
9 at the time the petition is filed. A petition shall not be dismissed
10 on the basis of a later judicial or administrative determination that
11 the individual's custody was unlawful, if the unlawful custody was
12 the result of a good faith mistake of fact or law. This paragraph
13 shall apply to any petition filed on or after January 1, 1996.

14 (b) The person shall be screened by the Department of
15 Corrections and Rehabilitation and the Board of Parole Hearings
16 based on whether the person has committed a sexually violent
17 predatory offense and on a review of the person's social, criminal,
18 and institutional history. This screening shall be conducted in
19 accordance with a structured screening instrument developed and
20 updated by the State Department of Mental Health in consultation
21 with the Department of Corrections and Rehabilitation. If as a
22 result of this screening it is determined that the person is likely to
23 be a sexually violent predator, the Department of Corrections and
24 Rehabilitation shall refer the person to the State Department of
25 Mental Health for a full evaluation of whether the person meets
26 the criteria in Section 6600.

27 (c) The State Department of Mental Health shall evaluate the
28 person in accordance with a standardized assessment protocol,
29 developed and updated by the State Department of Mental Health,
30 to determine whether the person is a sexually violent predator as
31 defined in this article. The standardized assessment protocol shall
32 require assessment of diagnosable mental disorders, as well as
33 various factors known to be associated with the risk of reoffense
34 among sex offenders. Risk factors to be considered shall include
35 criminal and psychosexual history, type, degree, and duration of
36 sexual deviance, and severity of mental disorder.

37 (d) Pursuant to subdivision (c), the person shall be evaluated
38 by two practicing psychiatrists or psychologists, or one practicing
39 psychiatrist and one practicing psychologist, designated by the
40 Director of Mental Health. If both evaluators concur that the person

1 has a diagnosed mental disorder so that he or she is likely to engage
2 in acts of sexual violence without appropriate treatment and
3 custody, the Director of Mental Health shall forward a request for
4 a petition for commitment under Section 6602 to the county
5 designated in subdivision (i). Copies of the evaluation reports and
6 any other supporting documents shall be made available to the
7 attorney designated by the county pursuant to subdivision (i) who
8 may file a petition for commitment.

9 (e) If one of the professionals performing the evaluation pursuant
10 to subdivision (d) does not concur that the person meets the criteria
11 specified in subdivision (d), but the other professional concludes
12 that the person meets those criteria, the Director of Mental Health
13 shall arrange for further examination of the person by two
14 independent professionals selected in accordance with subdivision
15 (g).

16 (f) If an examination by independent professionals pursuant to
17 subdivision (e) is conducted, a petition to request commitment
18 under this article shall only be filed if both independent
19 professionals who evaluate the person pursuant to subdivision (e)
20 concur that the person meets the criteria for commitment specified
21 in subdivision (d). The professionals selected to evaluate the person
22 pursuant to subdivision (g) shall inform the person that the purpose
23 of their examination is not treatment but to determine if the person
24 meets certain criteria to be involuntarily committed pursuant to
25 this article. It is not required that the person appreciate or
26 understand that information.

27 (g) Any independent professional who is designated by the
28 Secretary of the Department of Corrections and Rehabilitation or
29 the Director of Mental Health for purposes of this section shall not
30 be a state government employee, shall have at least five years of
31 experience in the diagnosis and treatment of mental disorders, and
32 shall include psychiatrists and licensed psychologists who have a
33 doctoral degree in psychology. The requirements set forth in this
34 section also shall apply to any professionals appointed by the court
35 to evaluate the person for purposes of any other proceedings under
36 this article.

37 (h) If the State Department of Mental Health determines that
38 the person is a sexually violent predator as defined in this article,
39 the Director of Mental Health shall forward a request for a petition
40 to be filed for commitment under this article to the county

1 designated in subdivision (i). Copies of the evaluation reports and
2 any other supporting documents shall be made available to the
3 attorney designated by the county pursuant to subdivision (i) who
4 may file a petition for commitment in the superior court.

5 (i) If the county's designated counsel concurs with the
6 recommendation, a petition for commitment shall be filed in the
7 superior court of the county in which the person was convicted of
8 the offense for which he or she was committed to the jurisdiction
9 of the Department of Corrections and Rehabilitation. The petition
10 shall be filed, and the proceedings shall be handled, by either the
11 district attorney or the county counsel of that county. The county
12 board of supervisors shall designate either the district attorney or
13 the county counsel to assume responsibility for proceedings under
14 this article.

15 (j) The time limits set forth in this section shall not apply during
16 the first year that this article is operative.

17 (k) An order issued by a judge pursuant to Section 6601.5,
18 finding that the petition, on its face, supports a finding of probable
19 cause to believe that the individual named in the petition is likely
20 to engage in sexually violent predatory criminal behavior upon his
21 or her release, shall toll that person's parole pursuant to paragraph
22 (4) of subdivision (a) of Section 3000 of the Penal Code, *if that*
23 *individual is determined to be a sexually violent predator.*

24 (l) Pursuant to subdivision (d), the attorney designated by the
25 county pursuant to subdivision (i) shall notify the State Department
26 of Mental Health of its decision regarding the filing of a petition
27 for commitment within 15 days of making that decision.

28 (m) This section shall become operative on the date that the
29 director executes a declaration, which shall be provided to the
30 fiscal and policy committees of the Legislature, including the
31 Chairperson of the Joint Legislative Budget Committee, and the
32 Department of Finance, specifying that sufficient qualified state
33 employees have been hired to conduct the evaluations required
34 pursuant to subdivision (d), or January 1, ~~2012~~, 2013, whichever
35 occurs first.

36 *SEC. 3. Section 1.5 of this bill incorporates amendments to*
37 *Section 3000 of the Penal Code proposed by this bill and Assembly*
38 *Bill 117, which has been chaptered but is not operative. Section*
39 *1.5 shall become operative only if (1) this bill is enacted and*
40 *becomes operative on or before January 1, 2012, (2) this bill*

1 *amends Section 3000 of the Penal Code, and (3) Assembly Bill*
2 *117 becomes operative, in which case Section 3000 of the Penal*
3 *Code, as amended by Section 1 of this bill, shall remain operative*
4 *only until the operative date of Assembly Bill 117, at which time*
5 *Section 1.5 of this bill shall become operative.*

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